

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

ALL AMERICA INSURANCE COMPANY,

Plaintiff,

v.

ANNETTE W. MORRIS,

Serve: S. Geoffrey Glick, Esquire
The Joel Bieber Firm
Commerce Plaza 1
2809 Emerywood Parkway, Suite 510
Richmond, VA 23294

and

SMALL CARS AMERICA, INC.,
t/a Grand Prix Racing,

Serve: c/o Secretary of the Commonwealth
1111 E. Broad Street, 4th Floor
Richmond, Virginia 23219

and

ROBIN R. LEE,

Serve: c/o Secretary of the Commonwealth
1111 E. Broad Street, 4th Floor
Richmond, Virginia 23219

and

T & D METAL PRODUCTS, LLC, d/b/a,
PROMO KARTS, LLC,

Serve: Richard L. James, Esquire
Richard L. James Law Offices
328 N. Central Avenue
P.O. Box 820
Paris, IL 61944

and

Civil Law No.: 4:11CV41

PROMO KARTS, INC., t/a Promo Karts,

Serve: Richard L. James, Esquire
Richard L. James Law Offices
328 N. Central Avenue
P.O. Box 820
Paris, IL 61944

and

PROMO KARTS, LLC., t/a Promo Karts,

Serve: Richard L. James, Esquire
Richard L. James Law Offices
328 N. Central Avenue
P.O. Box 820
Paris, IL 61944

and

TIMOTHY F. MORRIS

Serve: 26 Del Lago Drive
Williamsburg, Virginia 23185-6108

and

WOLFTRAP MOTORSPORTS, INC.,

Serve: c/o Louis F. Gioia, President
612 Cheadle Loop Road, #A
Seaford, Virginia 23696
(York County)

and

WAL-MART STORES EAST, L.P.,

and

ESSEX INSURANCE COMPANY,

and

MT. HAWLEY INSURANCE COMPANY,

Serve: CT Corporation System
4701 Cox Road, Suite 301
Glen Allen, Virginia 23060-6802

Defendants.

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AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, All America Insurance Company ("All America") by counsel, pursuant to §8.01-184 *et seq.*, of the Code of Virginia (1950), as amended, respectfully requests this Court to declare the rights and obligations of the parties to this controversy on the following grounds:

1. All America is a corporation duly authorized to transact business under the laws of the Commonwealth of Virginia.

2. Upon information and belief, Annette W. Morris is an individual who resides in Newport News, Virginia and is the plaintiff in the underlying tort action.

3. At all times material, Small Cars America, Inc., t/a Grand Prix Racing ("Grand Prix Racing") was a corporation organized and existing under the laws of the State of Arizona.

4. Robin R. Lee ("Lee") was, at all material times, the President and director of Grand Prix Racing.

5. T & D Metal Products, LLC., d/b/a Promo Karts, LLC, at all material times, was a corporation organized and existing under the laws of the State of Illinois.

6. Upon information and belief, Promo Karts Inc., t/a Promo Karts, at all material times, was a corporation organized and existing under the laws of the State of Illinois.

7. Upon information and belief, Promo Karts, Inc. was dissolved on or about August 12, 2009 and Promo Karts, LLC, t/a Promo Karts became authorized by the State of Illinois to operate, 9 days later, on August 21, 2009. Upon information and belief, Promo Karts, LLC is the successor in interest to Promo Karts, Inc.

8. Upon information and belief, T & D Metal Products, LLC, Promo Karts, Inc., and Promo Karts, LLC are all alter egos of each other and are all the same entity for purposes of the underlying tort action as well as this declaratory judgment action (hereinafter collectively referred to as "Promo Karts").

9. Timothy F. Morris, is and was at all material times a domiciliary of and resident of the Commonwealth of Virginia and currently resides in Williamsburg, Virginia.

10. Wolftrap Motorsports, Inc., d/b/a Langley Speedway ("Wolftrap Motorsports"), was at all material times a corporation existing and organized under the laws of the Commonwealth of Virginia and which managed Langley Speedway, located at 11 Dale Lemonds Drive, Hampton, Virginia.

11. Upon information and belief, at all times material Annette W. Morris was an employee of Wal-Mart Stores East, L.P.

12. Upon information and belief, Essex Insurance Company issued a Specified Products and Completed Operations Liability Insurance Policy to T & D Metal Products, LLC, d/b/a Promo Karts, LLC which was in effect at the time of the accident which is the subject of the underlying tort action.

13. Upon information and belief, Small Cars America, Inc., t/a Grand Prix Racing, was an additional insured under a liability insurance policy issued by Mt. Hawley Insurance Company to World Carting Association and/or other entities.

14. All America Insurance Company issued a Commercial General Liability insurance policy to T & D Metal Products Company, a.k.a., T & D Metal Products, LLC, d/b/a Promo Karts, LLC, bearing policy number CLP 8377294, which was in effect from April 1, 2008 to April 1, 2009 (hereinafter "the Policy").

15. **Exhibit A** attached hereto is a certified, true and accurate copy of the Policy.

16. Annette W. Morris filed a Complaint in this Court against Promo Karts, Inc. and Promo Karts, LLC, among other parties alleging that she sustained severe personal injuries as a result of an accident that occurred on May 3, 2008 when she was operating a "mini kart" designed, manufactured and sold by Promo Karts ("the Accident"). A copy of Annette W. Morris' Complaint is attached hereto as **Exhibit B** and is incorporated by reference herein.

17. The Accident occurred during an organized race event being held on May 3, 2008 and which is described more fully in Annette W. Morris' Complaint. Annette W. Morris was participating in the race on behalf of her employer, Wal-Mart Stores East, L.P.

18. Promo Karts now seeks a defense and coverage for the Accident and Annette W. Morris' lawsuit under the Policy.

19. An actual and justiciable controversy exists between All America and the named defendants as to the existence of coverage under the Policy.

20. All necessary parties are before the Court.

21. Under Section I – Coverages; 2. Exclusions, the Policy states that “This insurance does not apply to:

h. Mobile Equipment

“Bodily injury” or “property damage” arising out of:

2) The use of “mobile equipment” in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition or stunting activity.”

22. Under Section V – Definitions of the Policy, the term “mobile equipment” is defined as, among other things, “Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads.”

23. Based upon the allegations contained in Annette W. Morris’ Complaint, it is clear that Annette W. Morris was participating in a prearranged racing activity when the Accident occurred.

24. Based upon the allegations contained in Annette W. Morris’ Complaint, it is also clear that she was using “mobile equipment” at the time the injury occurred as the “mini kart” was designed for use principally off public roads.

25. Therefore, the loss as described by Annette W. Morris in her Complaint is excluded from coverage under the clear terms of the Policy and All America does not owe Promo Karts either a defense or indemnity for the Accident or any benefit of any kind or nature to Annette W. Morris for injuries or damages arising from the Accident.

WHEREFORE, plaintiff, All America Insurance Company, respectfully requests this Court to enter an Order declaring:

- A. That subject matter jurisdiction exists and that all necessary parties are before the Court;
- B. That the aforementioned exclusion for mobile equipment in the Policy is valid and enforceable;
- C. That the subject exclusion applies to the facts in this case and operates to exclude coverage to Promo Karts under the Policy for the Accident;
- D. That All America does not owe Promo Karts coverage, a defense, indemnity or any other benefit under the Policy for the Accident;
- E. That All America does not owe Annette W. Morris any benefit of any kind or nature under the Policy for injuries or damages that she allegedly sustained as a result of the Accident;
- F. That All America is entitled to such other relief as this Court deems appropriate.

ALL AMERICA INSURANCE COMPANY

/s/ Janeen B. Koch
Janeen B. Koch, Esquire
Virginia Bar No.: 37763
Attorney for All America Insurance Company
KALBAUGH, PFUND & MESSERSMITH, P.C.
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E-Mail: janeen.koch@kpmlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing ***Amended Complaint for Declaratory Judgment*** was sent this 18th day of March, 2011, via electronic mail using the court's ECF system with its automatic notice to:

Elizabeth S. Skilling, Esquire
Counsel for Essex Insurance Company
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